IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.948 OF 2005
IN
SUIT NO.1594 OF 1985

Bank of India .. Plaintiffs

Vs.

B.C.Mody Exports P.Ltd. & Anr .. Defenants

Ms.S.Shrikrishna with Mrs.F.Z.B.Kamdin i/b F.Z.B. for the plaintiffs

Ms.K.C.Nichani for the defendants

CORAM : S.U.KAMDAR, J

DATED : 22ND JULY 2005

P.C.:

1. The learned counsel for the plaintiffs does not press for prayer (b) of the motion and states that the contents of the documents will be proved in the course of the evidence. In so far as prayer (a) is concerned, the plaintiffs are seeking leave to bring secondary evidence on record in respect of item no.10, 12, 14, 16,18, 22 and 39 to the schedule annexed to the affidavit of documents. These documents are the carbon copies of the original which has been addressed by the plaintiffs

to the concerned party i.e. Commercial Bank of Africa and thus, original thereof is not in the custody of the plaintiffs. In the aforesaid circumstances, they are relying upon the carbon copies thereof which are the office copies. The learned counsel for the plaintiffs has also contended that in so far as item no.19, 20 and 36 are concerned, the same are photocopy of the original and the photocopy of the original are permissible as admissible secondary evidence under provisions of sub-section (2) of Section 63 of the Evidence Act, 1872 and therefore the same should be permitted to be produced in evidence.

2. In so far as explanation for non availability of original documents are concerned, the plaintiffs have filed an affidavit in support of the Chamber Summons and has explained that as far as carbon copies are concerned the originals are sent to the parties concerned to whom the said correspondence is addressed. Thus, they cannot be in possession of original thereof. In view of the aforesaid explanation, such documents are permitted to be produced in evidence by way of secondary

evidence

3. In so far as documents which are photocopies are concerned, the learned counsel for the plaintiffs has explained that inspite of diligent search, the original documents are not traceable and thus the plaintiffs be permitted to produce the photocopies as per the provisions of s.63 s.s.2 of the Act. In my opinion the present Chamber Summons can be granted subject to two conditions:

4. Firstly, the contents of the documents will have to be proved by the plaintiffs in the course of his evidence. Secondly, the documents are interpolated and/or all questions pertaining to the genuineness and validity of such documents are kept open to be determined at the hearing of the suit. Chamber Summons disposed of accordingly.